

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

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| STATE OF OKLAHOMA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 05-cv-329-GKF(SAJ) |
| |) | |
| TYSON FOODS, INC., et al., |) | |
| |) | |
| Defendants. |) | |

**STATE OF OKLAHOMA'S MOTION TO COMPEL DEFENDANT CARGILL, INC.
AND DEFENDANT CARGILL TURKEY PRODUCTIONLLC TO PRODUCE FOR
DEPOSITION A 30(b)(6) DESIGNEE FULLY KNOWLEDGEABLE ON THE NOTICED
SUBJECTS AND INTEGRATED BRIEF IN SUPPORT THEREOF**

Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma ("the State"), pursuant to Federal Rule of Civil Procedure 37, respectfully moves this Court for an order compelling Defendant Cargill, Inc. and Defendant Cargill Turkey Production LLC to produce for deposition a 30(b)(6) designee fully knowledgeable on the noticed subjects. In support of its motion, the State states:

I. Introduction

Defendant Cargill, Inc. and Defendant Cargill Turkey Production LLC ("the Cargill Defendants") are refusing to produce a corporate designee with knowledge concerning subjects that go to the very heart of the State's lawsuit. In a blatant attempt to obstruct the State's right to prove its case, and in clear disregard of Rule 30(b)(6), the Cargill Defendants have stated their intention to limit the scope of their 30(b)(6) designee's preparation to only those documents that the Cargill Defendants have produced to date. Moreover, the Cargill Defendants have

improperly sought to limit the scope of the State's questioning regarding (1) the full scope of the Cargill Defendants' activities in the Illinois River Watershed relating to poultry growing, (2) the full scope of the Cargill Defendants' knowledge of the effects on the environment of poultry waste and its constituents, and (3) the organizational structure and operations of Cargill business units that deal with issues pertaining to effects on the environment of poultry waste and its constituents. In short, the Cargill Defendants appear only to be willing to produce a witness that will support its defenses, while professing to be "not knowledgeable" about any of the State's claims. This limitation is unsupportable, obstructionist, and a clear violation of the Federal Rules. Accordingly, the State's motion to compel should be granted.¹

II. Background

On July 13, 2007, the State served upon the Cargill Defendants 30(b)(6) deposition notices. *See* Ex. 1.² As is clear from a review of these notices, the State is seeking information from a corporate designee of the Cargill Defendants on core subjects in this lawsuit.

Rather than agreeing to produce a corporate designee on the noticed subjects, the Cargill Defendants wrote a letter to the State raising various objections. *See* Ex. 3. Counsel for both sides met and conferred on August 1, 2007, regarding these objections. During that meeting the State explained the propriety of its 30(b)(6) notices and attempted to respond constructively to the Cargill Defendants' objections. Following that meet and confer session, on August 6, 2007, the Cargill Defendants wrote the State another letter attempting to put additional conditions on the deposition before agreeing to produce its corporate designee. *See* Ex. 4. Specifically, despite

¹ The State certifies that pursuant to LCvR 37.1 that it has conferred in good faith with the Cargill Defendants in an effort to resolve this dispute without Court involvement, but that it has been unsuccessful.

² On July 16, 2007, amended notices were served to state that the depositions would be videotaped. *See* Ex. 2.

their obligation to produce a fully-knowledgeable corporate designee, the Cargill Defendants conditioned the production of any 30(b)(6) designee upon the State agreeing to allow the Cargill Defendants to improperly limit the scope of their designee's preparation to only those documents the Cargill Defendants have produced to date or information with which the designee is otherwise independently familiar. Moreover, the Cargill Defendants have improperly taken the position that even though they are not providing a fully-prepared knowledgeable designee (as is their obligation under the Federal Rules), they will object to the State seeking to do a follow-up deposition of the identified designee. *See* Ex. 4.³

The Cargill Defendants' conditions are unsupportable. Accordingly, the State moves to compel.⁴

III. Argument

A. The Cargill Defendants are required to produce a fully knowledgeable designee

The law is clear: "To fully satisfy the [Rule 30(b)(6) request . . . the corporation must sufficiently 'prepare [the designee] so that [the designee] may give complete, knowledgeable and binding answers on behalf of the corporation.'" *Cupp v. Edward D. Jones & Co., L.P.*, 2007 WL 982336, *1 (N.D. Okla. Mar. 29, 2007) (citation omitted); *see also Nevada Power Co. v.*

³ In a letter dated August 9, 2007, the Cargill Defendants reiterated "the manner in which the Cargill Defendants will proceed with the 30(b)(6) deposition and prepare their witnesses." Ex. 5. That is to say, the Cargill Defendants continue to refuse, as is their duty, to fully prepare their designee on the subject matters listed in the 30(b)(6) notices.

⁴ This is not the first time the State has been forced to move to compel the Cargill Defendants to produce a knowledgeable witness. In its July 6, 2007 Order this Court granted the State's motion to compel the Cargill Defendants to make a knowledgeable 30(b)(6) witness available for deposition regarding the Cargill Defendants' document production. *See* DKT # 1207 ("The state is entitled to depose a Cargill representative who can give complete and knowledgeable answers regarding the scope and completeness of the search for Cargill's document production") (emphasis added).

Monsanto Co., 891 F.Supp. 1406, 1418 (D. Nev. 1995) ("In producing representatives for a Rule 30(b)(6) deposition, a corporation must prepare them to give 'complete, knowledgeable and binding answers'" (citation omitted). As explained in *Payless Shoesource Worldwide, Inc. v. Target Corp.*, 2007 WL 1959194, *1 (D. Kan. June 29, 2007):

"With regard to choosing a deponent to speak on behalf of the corporation, companies 'have a duty to make a conscientious, good-faith effort to designate knowledgeable persons for Rule 30(b)(6) depositions and to prepare them fully to unevasively answer questions about the designated subject matter.'" This duty does not require personal knowledge of the subject matter, but rather "'implicitly requires persons to review all matters known or reasonably available to [the corporation] in preparation for the 30(b)(6) deposition.'" Thus, "to avoid liability, the noticed party must designate persons knowledgeable in the areas of inquiry listed in the notice."

(Citations omitted.) As one court astutely noted, "the responding party 'must prepare deponents by having them review prior fact witness deposition testimony as well as documents and deposition exhibits.' Any other interpretation of the Rule would allow the responding corporation to 'sandbag' the deposition process" *Ice Corp. v. Hamilton Sundstrand Corp.*, 2007 WL 1732369, *4 (D. Kan. June 11, 2007) (citation omitted).

The Cargill Defendants should not be permitted to "sandbag" the deposition process by refusing to produce a fully knowledgeable designee. That preparing such a witness is burdensome is of no consequence. *See id.* ("That such depositions could be onerous to the corporation-party makes little difference"). "[T]he burden upon such a responding entity is justified since a corporation can only act through its employees." *Id.* In short, the Cargill Defendants are required under the rules to produce a fully knowledgeable designee to testify on the subjects identified in the State's 30(b)(6) notices.

B. The Cargill Defendants' restrictions on the temporal scope of its 30(b)(6) designee preparation are improper

Many of the subjects identified in the State's 30(b)(6) notices to the Cargill Defendants go to the issue of the Cargill Defendants' knowledge of the environmental effects of the land application of poultry waste. *See* Ex. 2. This Court has ruled that discovery into such matters is appropriate "without any limit as to the date of the documents" July 6, 2007 Order, p. 3 [DKT #1207]. The Cargill Defendants nonetheless unilaterally declare that "designee(s) will not be prepared to discuss corporate documents not yet produced or with which the designee is not independently familiar." *See* Ex. 4, p. 2 (emphasis added). Such a position is untenable under the Federal Rules and this Court's order.

Equally untenable is the Cargill Defendants' position that it is unreasonable for them to produce a 30(b)(6) designee knowledgeable about how their operations have evolved over the forty years that they have been active in the Illinois River Watershed. As noted above, for (at least) this same period of time the Cargill Defendants are required to be prepared to answer as to their knowledge of the actual or potential environmental and health impacts of the land application of poultry waste. This preparation would necessarily include preparation of their designee to address any and all efforts they have undertaken during the entire time that they have operated in the Illinois River Watershed to evaluate or quantify the environmental or human health risks posed by their poultry operations in this watershed. Similarly, the Cargill Defendants should be expected to prepare their designee to address, over this same period of time, their policies and practices pertaining to the management, handling, spreading and disposal of poultry waste generated by their operations in the Illinois River Watershed. All of this testimony goes not only to the essence of the State's claims but also to the very heart of the Cargill Defendants' denial of responsibility for the environmental deterioration of the Illinois

River Watershed and the growing dangers to human health there. Simply put, contrary to the Cargill Defendants' suggestion, the appropriate period of inquiry for discovery for these subjects is clear. Federal Rule 30(b)(6) requires the Cargill Defendants to produce a witness that is prepared to answer questions on these subjects.

C. The Cargill Defendants' restrictions on the geographical scope of its 30(b)(6) designee preparation are improper

Despite the Court ruling that discovery into the Cargill Defendants' knowledge of the environmental effects of the land application of poultry waste is appropriate "without any limit as to . . . geographical location to which they relate," *see* July 6, 2007 Order, p. 3 [DKT #1207], the Cargill Defendants similarly attempt to limit the scope of the State's inquiry. And again the Cargill Defendants unilaterally declare that their "designee would not be prepared to discuss corporate documents not yet produced or with which the designee is not independently familiar." *See* Ex. 4, pp. 2-3 (emphasis added). Again, such a position is untenable under the Federal Rules and this Court's order.

Specifically, the Cargill Defendants are required to produce a designee that is knowledgeable about the propensity of poultry waste -- or any of its constituents -- to be released or to run off from land to which it is applied and cause environmental pollution irrespective of where or from what operations that knowledge is derived. To the extent it has such knowledge based upon any of its operations, it plainly cannot shield such knowledge from discovery.⁵

⁵ At least part of the basis for the Cargill Defendants' argument is an overly broad reading of the term "data" as used in the Court's July 6, 2007 Order. "Data" is "factual information (as measurements or statistics) used as a basis for reasoning, discussion, or calculation." *See Merriam Webster's Collegiate Dictionary* (10th ed.). Accordingly, under a plain reading of the term "data," the State is clearly entitled, at a minimum, to any environmental impact conclusions that are reached from any data the Cargill Defendants have. That would include the environmental impact conclusions as to any individual constituent that may be found in poultry waste.

D. The Cargill Defendants' restrictions on the preparation of their 30(b)(6) designee with respect to knowledge of their corporate organization are improper

Next, the Cargill Defendants assert that they are not willing to produce a witness fully knowledgeable of Cargill's corporate structure. Contrary to the Cargill Defendants' suggestion, the State does not seek to quiz the 30(b)(6) designee as to each of its 90 different business units in more than 60 different countries. *See* Ex. 4, p. 3. The State is entitled to a designee, however, who is fully knowledgeable about the organizational structure and operations of each of those business units, irrespective of location, which deals with issues pertaining to or have knowledge of the environmental impacts of the release or run-off of poultry waste or any of its constituents.

E. The Cargill Defendants must produce a designee who is fully knowledgeable about any release or run-off of poultry waste generated at Cargill's own or contract growing operations

The Cargill Defendants have refused to prepare a designee "to discuss any specific instances of 'run-off' . . . that have not been disclosed in the State's interrogatory responses." Ex. 4, p. 4. This is improper. To the extent the Cargill Defendants have knowledge of any instances of poultry waste releases or run-off (including any of its constituents) in the Illinois River Watershed, the Cargill Defendants are required to prepare their designee to testify on such instances.

F. The State will be entitled to a follow-up deposition of the Cargill Defendants' 30(b)(6) designee to the extent the designee is not properly prepared

According to their letter, "the Cargill Defendants will object to any attempt by the State to re-depose the identified designees on the basis of any information that may later be identified in documents produced after the date of the deposition." Ex. 4, p. 4. This position is untenable inasmuch as the Cargill Defendants have expressly stated that they are going to produce a less than fully prepared designee for deposition. "Producing an unprepared witness is tantamount to

a failure to appear at a deposition." *Starlight International, Inc. v. Herlihy*, 186 F.R.D. 626, 639 (D. Kan. 1999) (citation omitted). Therefore, the State will be entitled to a follow-up deposition of the Cargill Defendants' designee to the extent he / she is not fully prepared on each and every one of the noticed subjects. The Cargill Defendants cannot refuse to prepare its designee to fully address such subjects as the Cargill Defendants' knowledge of the environmental impacts of their waste disposal practices on the basis that they have yet to produce documents concerning those subjects. Similarly, should the Cargill Defendants' designee misrepresent the state of corporate knowledge relating to the noticed subjects and later document productions reveal that the Cargill Defendants' designee was less than forthright or incomplete the State would have the right to resume its deposition.

IV. Conclusion

WHEREFORE, in light of the foregoing, this Court should enter an order compelling the Cargill Defendants to make a 30(b)(6) designee fully knowledgeable on the noticed subjects available for deposition.

Respectfully Submitted,

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I hereby certify that on this 16th day of August, 2007, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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